

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST ) |                          |
| FOR REVIEW BY: )               | CHARGE NO.: 2009SE2498   |
| )                              | EEOC NO.: 440-2008-08210 |
| <b>MALCOLM BEASLEY</b> )       | ALS NO.: 09-0559         |
| )                              |                          |
| Petitioner. )                  |                          |

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini, presiding, upon Malcolm Beasley's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009SE2498; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On October 21, 2008, the Petitioner filed a charge of discrimination with the Respondent, and the Petitioner amended the charge on June 23, 2009. The Petitioner alleged in the charge that Archer Daniels Midland Co. ("Employer") threatened to demote him (Count A), subjected the Petitioner to unequal terms and conditions of employment (Count B), failed to assign the Petitioner technical job duties or to provide him with a telephone (Count C), and failed to provide the Petitioner with tools (Count D), because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On September 2, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 6, 2009, the Petitioner filed a timely Request.
2. The Employer first hired the Petitioner in July 1998 as an Assistant Buildings/Grounds Crew member. In 2002, the Petitioner became an Entry Level I/Mechanic Trainee in the Employer's HVAC Unit of the Maintenance Department.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

3. On August 6, 2008, the Petitioner's supervisor told the Petitioner that he was going to be demoted to his former position as a Ground Crew member because of the Petitioner's poor work performance. The Petitioner objected to the demotion. In response to the Petitioner's objection, the Respondent gave the Petitioner three months to improve his performance. At the end of this three-month probation period, the Respondent determined the Petitioner had improved his performance and decided not to demote the Petitioner.
4. On August 6, 2008, and August 8, 2008, the Petitioner requested a copy of his main personnel file from the Employer's Human Resources department. On August 8, 2008, the Respondent gave the Petitioner a copy of his personnel file. The Petitioner's personnel file did not contain a copy of his performance evaluations.
5. The Respondent determined that the Employer made performance evaluations mandatory in 2007. The Respondent further determined that performance evaluations were maintained in a separate file in the employee's division, and that the performance evaluations were not always sent to the main personnel file maintained by the Employer's Human Resources Department.
6. The Respondent also determined that two similarly situated non-Black employees who were also Mechanic Trainees had not been assigned technical duties, nor had they been provided with technical tools or a company phone.
7. In his Request, the Petitioner contends the Employer threatened to demote him on August 6, 2008, because of his race, Black. The Petitioner also argued that because his main personnel file did not contain his performance evaluation on August 8, 2008, the Respondent effectively refused to provide the Petitioner with his personnel file. The Petitioner states the Employer's witnesses, all allegedly Caucasian, were not credible, and that the Employer's witnesses had never treated the Petitioner equitably. Finally, the Petitioner argues the Employer never presented proof the Petitioner had any performance issues or that he lacked technical skills.
8. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues there was no substantial evidence to support a *prima facie* case of race discrimination. The Respondent also found no substantial evidence the Employer's stated reasons for its actions were pretext for unlawful discrimination. Finally, the Respondent argues that to the extent the Petitioner's allegations refer to actions that occurred prior to April 24, 2008, those allegations were untimely.

## **Conclusion**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, \* 2 ( March 7, 1995)(1995 WL 793258).

As to Count A, in which the Petitioner alleged he was threatened with demotion based on race, there is no substantial evidence of race discrimination. There has been no evidence presented from which any reasonable person could conclude that the Employer was motivated by the Petitioner's race. Furthermore, there is insufficient evidence to establish even a *prima facie* case of race discrimination as to Count A because the Commission does not find that a *threatened* demotion, ultimately unrealized, constitutes an adverse action. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994).

As to Count B, the evidence shows that the Petitioner did receive his personnel file. However, the Petitioner's allegation rests on the fact that he did not receive copies of his performance evaluation within the personnel file. Again, the Commission finds no substantial evidence the Petitioner's performance evaluation was left out of his personnel file because of the Petitioner's race. The Commission has before it only the Petitioner's speculation that race was the motivation for the Employer's omission, but speculation is not substantial evidence of discrimination. See Willis v. Illinois Dep't of Human Rights, 307 Ill.App.3d 317, 326, 718 N.E.2d 240 (4<sup>th</sup> Dist. 1999). Therefore, Count B was properly dismissed for lack of substantial evidence.

As to Counts C and D, assuming *arguendo* that the Petitioner's charge was timely as to those allegations, there is no substantial evidence the Petitioner was denied technical tools, technical jobs, or a company phone because of his race. In fact, to the contrary, there is evidence the Petitioner was treated the same as similarly situated non-Black Mechanic Trainees under similar circumstances.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

## **THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

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HUMAN RIGHTS COMMISSION

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*In the Matter of the Request for Review by: Malcolm Beasley*

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Archer Daniels Midland Co., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 28<sup>th</sup> day of April 2010.**

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini